IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29. 01.2007

CORAM

THE HONOURABLE MR.JUSTICE M.JAICHANDREN

WRIT PETITION No.25359 of 2002

A.Arokiasamy ... Petitioner

Vs.

1. Tamil Nadu Civil Supplies Corporation Ltd.
rep.by its Senior Regional Manager,
South Arcot Region,
Cuddalore.

2. The Tamil Nadu Civil Supplies Corporation Ltd,
rep.by its General Manager (Administration),
42, Thambusamy Road, Kilpauk,
Chennai - 10

3. The Tamil Nadu Civil Supplies Corporation Ltd
rep.by its Chairman cum Managing Director,
42, Thambusamy Road, Kilpauk,
Chennai - 10

4. The Tamil Nadu Civil Supplies Corporation Ltd ,
rep.by its Senior Regional Manager,
Villupuram Region, Villupuram. .. Respondents

* * *

The Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus as stated therein.

* * *

For petitioner : Mr. Venkataraman
For respondents : Mr.C.Selvaraj

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O R D E R

The Writ Petition has been filed praying for the issuance of a Writ of Certiorarified Mandamus to call for the records relating to the proceedings No.G5/122049/94, dated 10.07.1995, of the second respondent along with the proceedings No.G3/102907/95, dated 04.06.2001, of the third respondent along with the consequential

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recovery order No.Na.Ka.E10/6029/93, dated 27.02.2002, of the fourth respondent herein, quash the same and consequently direct the respondents to promote the petitioner as Assistant Manager (Quality Control) with effect from the date he became eligible with all attendant benefits .

2.Heard the learned counsel for the petitioner as well as for the respondents.

3.The brief facts of the case, leading to the filing of the writ petition, are as follows:-

The petitioner has been working as Quality Inspector at the Modern Rice Mill, Neyveli, under the control of the first respondent. During the period between 01.06.1983 and 26.12.1983, he was working as Quality Inspector at the Modern Rice Mill, Kallakurichi. Thereafter, he had been transferred to various places. The petitioner had received a charge memo, dated 14.10.1992, from the first respondent. The charge was that during the petitioner's period of service at the Modern Rice Mill , Kallakurichi, he had caused damage to 27,677 gunnies by keeping them in the open place. The charge memo came to be issued based on the inspection report of the vigilance cell which had inspected the Mill at Kallakurichi, on 08.10.1986. Charges were also framed against several other employees who were employed in the mill. On receipt of the charge memo, the petitioner had given his explanation on 25.06.1993, pointing out that he had worked in the said mill only from 01.06.1983 to 25.12.1983 and during the said period he did not keep the gunnies outside in the open space. He had also stated that the gunnies had been kept outside during the 1984 samba season and not during his period. The petitioner had pointed out that he was discharging his duties under the supervision of the Assistant Manager (Quality Control) and therefore, the petitioner cannot be held responsible for the alleged damage caused to the gunnies. Since the explanation submitted by the petitioner was not taken to be satisfactory, an enquiry had been ordered. The Deputy Manager (Accounts) had held the enquiry on 30.03.1994. During the enquiry, the petitioner had examined the then Maistry of the Modern Rice Mill, Kallakurichi, who had testified that the gunnies were kept in the open space only during the year, 1984 and not during the petitioner's tenure. Inspite of overwhelming evidence in favour of the petitioner the Enquiry Officer gave his findings, holding the charges as proved, on the ground that the petitioner had failed to disprove the charges through proper evidence. On receipt of the report of the Enquiry Officer, by the memo, dated 04.07.1994, the petitioner had submitted a further explanation, on 15.07.1994, pointing out that the Enquiry Officer has held the charges as proved in a mechanical manner without recording any evidence and that the findings of the Enquiry Officer were in violation of the principles which were to be followed during the domestic enquiry. The second respondent by his proceedings

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RC.No.G5/122049/94, dated 10.07.1995, had imposed on the petitioner the punishment of stoppage of increment for a period of two years with cumulative effect. Thereafter, he had preferred an appeal on 15.09.1995, to the third respondent , who by his proceedings No.G3/102907/95, dated 04.06.2001, had held that the charges were not proved and modified the earlier punishment to one of stoppage of increment for a period of two years, without cumulative effect. The order passed in the appeal was served on the petitioner on 09.08.2001. Later, the fourth respondent, by his proceedings No.Na.Ka.E10/6029/93, dated 27.02.2002, imposed the recovery of Rs.5,819.25 on the petitioner.

4.In the counter affidavit filed on behalf of the third respondent, in paragraph 3, it has been stated as follows :-

"The petitioner was working as Assistant Quality Inspector at Modern Rice Mill, Kallakurichi, South Arcot Region. On 08.10.1986, the Vigilance Cell, Head Office, Chennai, inspected the Modern Rice Mill at Kallakurichi and observed certain irregularities and lapses and based on the Vigilance Report, Charge Memo was issued to the petitioner with regard to improper maintenance of gunny bags stored in the Modern Rice Mill. The petitioner was working at Kallakurichi Branch during the period from 1/6/83 to 26/11/83. The Vigilance Cell upon physical verification found 27677 Nos. of gunnies kept in the open space were completely damaged. The petitioner in the capacity of Asst.Quality Inspector on duty, for proper maintenance of gunnies had kept the stock of gunnies in the open yard without obtaining permission from the competent authorities. The cost of the damaged bags worked out to Rs.1,57,809.75 for which show cause notices were issued to 26 individuals including the petitioner who worked at Kallakurichi Modern Rice Mill during the said period and who was subsequently transferred to Villupuram Region. As the Vigilance Cell observed that the gunnies were kept in the open yard since 8/7/83 during which period the petitioner was working in Kallakurichi Modern Rice Mill, charge memo issued on 26/01/1992 for the following three charges:

a) That being the Quality Inspector, holding a responsible post, he has kept the 100 Nos of 100 Kgs New Bale gunnies and 25205 Nos of unserviceable gunnies in the open yard without obtaining proper sanction from the competent authorities to do so;

b) That he, as Quality Inspector, has failed in his duty to preserve the gunnies from destruction and caused monetary loss to the Corporation by keeping it in the open yard thus exposing to vagaries of weather;

c) That he, as Quality Inspector, is responsible for the loss to the tune of Rs.1,57,809.75 sustained by the

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Corporation thus charged for dereliction of duties allotted to him.

ii. The explanation submitted by the petitioner was not convincing and it was not supported by any documentary proof. The Enquiry Officer vide his report, dated 4/7/94, held the charges as proved and accordingly punishment was proposed. On 15.09.95, the petitioner preferred an appeal against the punishment imposed by the second respondent and taking into account the circumstances the third respondent reduced the punishment on 4/6/2001 and accordingly orders were passed reducing the punishment to stoppage of one increment for a period of two years without cumulative effect. The petitioner has failed to protect the respondent Corporation's materials as Quality Inspector and for his failure to perform his duties and dereliction of duties only he was awarded the punishment. He cannot claim promotion as Assistant Manager as prayed for in his affidavit once he failed to perform his duties and protect the properties of the Corporation."

5.The learned counsel appearing for the petitioner had stated that the Domestic Enquiry Officer had submitted a cryptic report which does not contain any reasons to find the petitioner guilty of the charges alleged against him. Further, it is clear that there was no documentary evidence produced during the enquiry nor there were witnesses to adduce oral evidence. Further, the petitioner cannot be held responsible for the alleged loss of the gunnies since it did not happen during the period when the petitioner was incharge of protecting the gunnies. The order passed by the second respondent on 10.07.1995, cannot be sustained since it is not based on sound reasons or evidence. The order passed by the Appellate Authority on 04.06.2001, even though modified the punishment that had been imposed on the petitioner earlier, it is without any basis and therefore, contrary to the principles of law. The fourth respondent by his order, dated 27.02.2002, had ordered the recovery of Rs.5,819.25 to compensate the alleged loss caused by the petitioner and several other persons. The said order cannot be sustained in the eye of law since the charge against the petitioner has not been proved based on sufficient evidence, documentary or oral. The learned counsel for the petitioner has further stated that the petitioner had been put to severe mental agony and irreparable monetary loss due to the impugned orders passed by the respondents. Further, the petitioner has lost his chances of promotion.

6. The learned counsel appearing on behalf of the respondents had pointed out that the petitioner has been temporarily promoted as Deputy Manager (Quality Control) in the time scale of pay of Rs.6,500-200-10,500 and posted as Deputy Manager (Quality Control) in Modern Rice Mill , Erukkur, (Godown Complex), Nagapattinam Region, in

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the existing vacancy, vide proceedings Rc. No.AE13/65392/2006-2, dated 26.09.2006, issued by the Chairman and Managing Director, Tamil Nadu Civil Supplies Corporation Ltd.

7.On a perusal of the records available before this Court and based on the submissions made by the learned counsels appearing on behalf of the petitioner and the respondents it is found that the alleged loss of gunnies was during the period 01.06.1983, to 25.12.1983. Inspection of the Modern Rice Mill , Kallakurichi , had taken place only on 08.10.1986, nearly three years after the said period. Charges were framed against the petitioner, on 26.01.1992. However, there are no reasons shown as to why there has been such a long delay between the period of the alleged loss and the date of inspection. There is no explanation as to why the charges were framed only after nearly six years from the date of inspection. Further, the Domestic Enquiry Officer has not shown sufficient reason in his report to sustain his findings. The report is clearly flimsy in nature and devoid of necessary particulars to hold the charges against the petitioner as proved. Further, when the entire amount alleged to have been lost, has been recovered from the petitioner as well as from the other persons employed in the Modern Rice Mill, Kallakurichi, there was no reason for the petitioner to be punished with stoppage of increment for a period of two years without cumulative effect, without considering to the recovery proceedings. Unless the charges against the petitioner could have been proved, based on sufficient documentary and oral evidence, the allegations made against the petitioner cannot be sustained.

8.It has been also submitted that the recovery of a sum of Rs.5,819.25, from the petitioner, has already been made and the petitioner has already suffered the punishment of stoppage of increment for a period of two years without cumulative effect. In such circumstances, this Court does not find sufficient reasons to sustain the impugned orders passed by the respondent against the petitioner. Therefore, the impugned orders are set aside, as being unsustainable and devoid of merits. In such view of the matter, the writ petition stands allowed. No costs.

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Sd/
Asst. Registrar

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Sub Asst.Registrar

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To

1. The Senior Regional Manager,
   Tamil Nadu Civil Supplies Corporation Ltd.
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   Cuddallore.

2.The General Manager (Administration),
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3. The Chairman cum Managing Director,
   The Tamil Nadu Civil Supplies Corporation Ltd
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4. The Senior Regional Manager,
   Tamilnadu Civil Supplies Corporation Ltd,
   Villupuram Region,
   Villupuram.

1 CC TO MR.C. SELVARAJ, ADVOCATE SR 5241

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